

ROBERT H. COOPER

IBLA 83-344

Decided August 31, 1983

Appeal from decision by District Manager, Coeur d'Alene District Office, Bureau of Land Management, rejecting color-of-title application I-19029.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title:
Applications

A class 1 color-of-title claim made under Departmental regulation 43 CFR 2540.0-5(b) must be based upon a document which appears to convey the claimed land to claimant or his predecessors. In the absence of any documentary evidence of claim of title, the Bureau of Land Management correctly rejected claimant's application.

APPEARANCES: Robert H. Cooper, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert H. Cooper appeals from the decision of the District Manager, Coeur d'Alene District Office, Bureau of Land Management (BLM), dated January 7, 1983, rejecting his application I-19029, to acquire 60 acres of land in Idaho County, Idaho, under the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. § 1068 (1976). On November 15, 1982, appellant filed a color-of-title claim with BLM in which he stated the basis for his claim to be that: "Claimant is heir of father of same name who acquired property in 1885 by his marriage to Jane Doe Cooper, who acquired said property by conveyance of apprx. same date from Ung, Gung Heo noted in SAND CREEK MINING RECORDS, Idaho Co., ID." The application describes a 60-acre tract in Idaho County, Idaho.

The record on appeal establishes that claimant began living on the claimed land in 1972. In 1976 BLM served appellant with a formal notice of trespass. Subsequently, proceedings were brought in the United States District Court for the District of Idaho to remove him from the property. Portions of a transcript of proceedings had in the District Court on June 21, 1982, establish that appellant has no documentary evidence of his claim, which is not based upon a deed or other document. His interest in the property is claimed based upon an oral devise to him by his father at the time

of his death, in 1952, who appellant reports told him "Here kid, it's yours" (Tr. 17). Although the interest of appellant's father was reputedly based upon an earlier transaction in the 1880's between the father and his wife, there is no document to record that transfer. Similarly, there is no document to show a conveyance from Ung, Gung Heo to Mrs. Cooper. No document of any kind exists to support the assertion by appellant that he traces his claim of title through his father to Mr. Ung, sometime in the 19th century. Appellant also stated in his testimony that he has placed substantial improvements upon the land, and the record indicates he cultivated a part of it continuously since 1972. The record on appeal also indicates that appellant, on January 15, 1973, filed a placer location on a tract in Idaho County, Idaho, with the county recorder.

In the January 7, 1983, decision rejecting appellant's claim of title, the District Manager observed pertinently:

The purpose and intent of the Color-of-Title Act is to provide a legal method whereby a valid title to a tract of public land may be acquired by a citizen, who, relying in good faith upon a title or a claim of title derived from some source other than the government, has been in peaceful adverse possession of the tract for the prescribed period. The basic element of the claim to the public land must be his possession of it under a color-of-title from some source other than the U.S. Cloyd and Velma Mitchell, 22 IBLA 299, 303; Mable M. Farlow, 30 IBLA 326.

The accepted weight of authority in the absence of statute is to the effect that color of title can be founded only upon an instrument in writing. Peterson V. Weber County 103 P2d 652, 655 (1939); Mildred A. Powers, 27 IBLA 213; Frank W. Sharp, 35 IBLA 257; Anthony T. Ash 52 IBLA 210.

No evidence was presented to show that any conveyance of the subject lands has ever been made to the applicant or his predecessor in interest. He has thus failed to provide the essential evidence required for a color of title claim.

The regulations of 43 CFR Part 2540.05(b) state in part:

A claim of class 1 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation.... A claim is not held in good faith where held with knowledge that the land is owned by the United States.

In 1973, the applicant acknowledged title in the United States by locating mining claims and recording the location notices in the office of the Idaho County Recorder. One who has filed mining claims on the land cannot be holding land in good faith possession. Purvis V. Vickers, et al, 67 ID 110. Further evidence of lack of good faith is presented in

Idaho County tax records which show personal property taxes collected from the applicant on improvements of "BLM land".

A class 1 claimant under the Color-of-Title Act must establish the elements of adverse possession including actual, exclusive, continuous, open, and notorious possession of the land for the requisite statutory period of 20 years. The applicant indicates a class 1 color-of-title claim on his application but provides no evidence of peaceful, adverse possession for the required period. The applicant's claim is supported only by his statement that he inherited the property from his father, without evidence to document his father's claim to the property or the inheritance upon his father's death.

Appearing on his own behalf by brief appellant denies that the tract is limited in extent to 60 acres, and claims that it is, in fact, 240 acres in extent. 1/ He then recites that his claim of ownership is based upon mining claims located under the "1872 MINING LAWS." 2/ Appellant claims to have made a valid discovery of gold on the 240-acre tract as well as bentonite in commercial quantities, and a "twelve feet deep vein of" talc. 3/ According to appellant, there exists "ABOUT A MILLION TONS" of talc, on the claim. Based on the existence of this mineral, he constructed a factory to process the material. 4/ On the basis of the work he has done on the claim and the valuable minerals he claims are to be found on the land, appellant asserts he is entitled to a patent under the mining laws, and that he was improperly induced to file a color-of-title application against his wishes and contrary to his interest. 5/ Appellant states he has made no filings concerning the mining claims with BLM, and asserts that he is not required to make any filing with BLM in order to maintain a valid mining claim either under Idaho law or under the "1872 MINING LAWS." 6/

[1] Appellant's brief on appeal establishes conclusively that his claim of ownership under the Color of Title Act is not made in good faith, as required by 43 CFR 2540.0-5(b), because it is not, in fact, based upon an instrument intended to convey the claimed land, but rather rests upon the application of local mining laws of the State of Idaho. In similar cases where an application for patent has been made under the Color of Title Act, which is unsupported by documents of conveyance purporting to convey the sought after land, the Department has consistently rejected the application. See Charles M. Schwab, 55 IBLA 8 (1981); Anthony T. Ash, 52 IBLA 210 (1981) and cases cited. As a general rule, there can be no valid claim of title under the Color of Title Act to land which is not based upon a description in some instrument of conveyance. Charles M. Schwab, supra at 11. The Board holds, therefore, that appellant has failed to establish a valid claim of color of title based upon the record on appeal.

1/ The Color of Title Act limits relief under the Act to 160 acres. (43 U.S.C. § 1068).

2/ Appellant's Brief at 2.

3/ Appellant's Brief at 3.

4/ Appellant's Answer, filed Feb. 15, 1983.

5/ Appellant's Answer, dated Feb. 9, 1983.

6/ Appellant's Answer, dated Feb. 9, 1983, at 2.

Appellant's argument concerning the validity of asserted mining claims is not properly before this Board. There has apparently been no adjudication of the claims by BLM, probably because appellant has not complied with the requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), regarding recordation of the claims with BLM or filing annually with BLM notice of intention to hold the claims or evidence of assessment work. No comment by the Board concerning the possible validity of the claims asserted to have been located by appellant is possible, under the circumstances of this appeal. 7/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

7/ Appellant asserts that he has been unfairly treated throughout this proceeding by an unfeeling Government. The record on appeal does not support his assertion, but indicates that he has received a review of his claim by the BLM District Manager and now this Board, and that he has had a hearing, as well, before the Idaho United States District Court. He may not fairly contend, as he appears to do, that he has not been permitted to be heard.

